

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Petition No.2837 of 2007

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Between:
Mumtaz T. Khambati
... Petitioner

And
The Karur Vysya Bank Limited,
Rep. by its Branch Manager & others
... Respondents

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:: ORDER ::

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Counsel for the Petitioner: Shri V. Srinivas
Counsel for Respondent Nos.1
and 2: Shri Deepak Bhattacharjee
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March 29, 2007

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing order dated 20-3-2003 passed by Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') in F.A.No.57 of 1999 and also for issue of a mandamus to respondent Nos.1 and 2 to pay him compound interest @ 15.84% on the decretal amount.

The petitioner and seven others deposited £3,08,675.75 with the London Branch of Karoor Vysya Bank Limited (for short, 'the bank') on 15-10-1991 with an understanding that the latter will arrange for transfer of the foreign currency to India at the best possible rate in Indian rupee and the proceeds would be converted into certificates of deposit for 91 days. The officers of London Branch of the bank informed its International Division Branch at Madras through fax and also to Secunderabad Branch on telephone about the deposit of pounds and asked the latter to deposit Rs. 1,35,80,101/- into eight accounts. While effecting transfer of the foreign currency and converting it into Indian rupee, the International Division Branch of the bank at Madras adopted the rate as Rs.100/- equivalent to 2.2730 pounds. The receipts are said to have been delivered to the petitioner and seven others with an endorsement "interest to run from 15-10-1991". They represented to the Chairman of the bank that as on 15-10-1991, Rs.100/- were equivalent to 2.2700 pounds in Hyderabad and, therefore, they were entitled to an additional amount of Rs.21,613/-. After some correspondence, the bank rejected the claim of the petitioner and seven others.

Feeling aggrieved by the decision of the bank, the petitioner and seven others filed a complaint under Section 12 of the Consumer

Protection Act, 1986 (for short, 'the Act') before District Consumer Forum – II, Hyderabad (for short, 'the District Forum') for issue of a direction to the respondents to pay a sum of Rs.21,613/- towards shortfall/loss caused to them with interest amounting to Rs.14,937/- for the period from 15-10-1991 to 15-10-1994 and further compound interest with damages to the tune of Rs.16,000/-. The same was registered as O.P.No.1132 of 1994. In the counter filed on behalf of the respondents, it was pleaded that the complainants do not fall within the definition of 'consumer'; that there was no deficiency of service and that the complaint was barred by time.

On the pleadings of the parties, the District Forum framed the following points:

- i) Whether the complaint is maintainable under the C.P.Act?
- ii) Whether the complaint is time barred under C.P.Act?
- iii) Whether the complainant is entitled to rate of exchange prevalent to 15.10.91 i.e. Rs.100/- = ₹2.27?
- iv) Whether the complainants are entitled for the reliefs sought for?

The District Forum held that the complainants fall within the definition of 'consumer' and that there was deficiency of service. However, the point of limitation was decided against the complainants and, on that premise, the complaint was dismissed vide order dated 11-11-1998.

The appeal preferred by the petitioner and seven others against the order of the District Forum was allowed by the State Commission vide its order dated 20-3-2003 and the respondents were directed to give remittance of the amount at the rate prevailing on 15-10-1991. The relevant portions of that order are reproduced below:

“It is true that the respondents replied the first letter of the complainants dated 20-11-1991 on 23-11-1991, where they stated that the matter has been referred to the International Division and the concerned branch and after receipt of their reply, the complainants would be informed. The second letter dated 3-12-1991 of the second respondent stated that steps have been initiated in the matter and it would be completely studied and if there was a case, the bank will make amends. However, after these two letters, there was no further communication from the bank till 2-9-1993 when it finally rejected the claim though the appellants wrote number of letters. Therefore, if we taken into account the rejection letter dated 2-9-1993, the complaint is not time barred.

As per the letter dated 2-9-1993 the money was deposited at London and immediately telex was sent and thereupon the branch at Secunderabad was advised to credit the amount to the account of the complainants without any delay. The respondents contend that the banks in India are not expected to transact in foreign exchange business beyond the banking hours. As per Ex.A.1 dated 15-10-1991 of State Bank of India, Hyderabad the conversion rate of sterling pound is shown as 2.2700 however the exchange rate for 16-10-1991 has not been filed. However, there is no document filed by the respondents to show the rate prevailing on 16-10-1991 on which date they were supposed to have converted the pounds. As per their version, on 16-10-1991, Rs.100/- was equal to £ 2.2730 at which rate it was credited to the accounts of the applicants. Since they have received the message on 15-10-1991 and the pounds were deposited in their bank at London on the same day and communicated to Madras exchange, who in turn directed Secunderabad branch to remit in the accounts of the appellants, it will be in the fitness of things that they should pay the appellants at the conversion rate prevailing on 15-10-1991. It is not concern of the appellants Forum. Opposite parties filed their counter and also that the complainants were whether the respondents bank was able to utilise the money from the same day or on the next day. We, therefore, agree with the finding of the District Forum that there is deficiency in service in not remitting the

rate prevailing on 15-10-1991 to the credit of the appellant's accounts. Keeping the final decision pending for two years, if things were really that clear, the respondents need not take all the time in replying the appellants. We, therefore, allow the appeal and set aside the order of the District Forum dismissing the complaint and direct the respondents to give remittance of the amount in the C.D. of the appellants on 15-10-1991 at the prevailing rate on that day with costs of Rs.5,000/-."

The petitioner and co-complainants did not challenge the order of the State Commission by filing revision under Section 21 (b) of the Act or by filing writ petition under Article 226 of the Constitution of India. Instead, they filed an application under Section 27 of the Act for award of interest @ 15.84% for every three months. The same was registered as P.P.No.37 of 2004. By an order dated 25-5-2005, the District Forum, after taking note of the fact that order dated 20-3-2003 passed by the Commission was silent about the rate of interest, directed the respondents to deposit an amount of Rs.21,613/- with interest @ 12% from 14-10-1991 till the date of payment. Paragraph 2 of the order passed by the District Forum reads as under:

"The Hon'ble State Commission has not stated that the complainants are entitled for compound interest @ 15.84% p.a. for every 3 months. Since the Hon'ble State Commission is silent about the rate of interest to be charged on the principal amount of Rs.21,643/-, the normal interest that is being allowed in almost all cases by all Consumer Redressal and copies of which is the settled law is only 12% p.a. Hence, the opposite parties are directed to deposit an amount of Rs.21,613/- (Rupees twenty one thousand six hundred thirteen only) with interest @ 12% p.a. from 14.10.1991 till the date of payment and costs of Rs.5,000/- as awarded by the Hon'ble State Commission, on or before 20.6.2005."

The petitioner and seven others unsuccessfully challenged the

aforementioned order of the District Forum inasmuch as the revision filed by them, which was registered as R.P.No.207 of 2006, was dismissed by the State Commission vide its order dated 11-10-2006 with an observation that the District Forum did not commit any illegality by awarding interest @ 12% because order dated 20-3-2003 did not contain a direction for payment of interest.

The petitioner challenged the last mentioned two orders of the District Forum and the State Commission in Writ Petition No.24756 of 2006, but withdrew the same on 29-11-2006 with liberty to file fresh petition on the same cause and also challenge order dated 20-3-2003. For the sake convenience, the relevant extracts of that order are reproduced below:

“This petition is directed against order dated 25.5.2005 passed by District Consumer Disputes Redressal Forum-II, Hyderabad in P.P.No.37 of 2004 in O.P.No.1132 of 1994 and order dated 11-10-2006 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission in R.P.No.207 of 2006.

After arguing the case for sometime, Shri V. Srinivas, learned advocate for the petitioner made a request that his client may be permitted to withdraw this petition with liberty to file fresh one on the same cause and also challenge order dated 20.3.2003 passed by the State Commission in F.A.No.57 of 1999.

Shri Deepak Bhattacharjee, learned counsel appearing for respondent Nos.1 and 2 says that he does not have any objection.

In view of the above, the request of Shri Srinivas is accepted and the writ petition is dismissed as withdrawn with liberty in terms of the prayer made.

As a sequel to dismissal of the writ petition, WPMP No.3167 of 2006 filed by the petitioner for interim relief is also dismissed.”

After about three months, the petitioner alone filed this petition

for grant of relief to which reference has been made hereinabove.

The case set up by the petitioner is that in terms of the agreement entered with the bank, he is entitled to interest @ 15.84% and the District Forum as well as the State Commission committed a jurisdictional error by declining relief to him only on the premise that order dated 20-3-2003 passed by the latter did not contain a direction for payment of interest at that rate.

In the counter filed by Shri L. Muthukrishnan, Chief Manager and Branch Head of the R.P. Road branch of the bank, the objection of delay has been raised and it has been pleaded that the writ petition is liable to be dismissed as barred by time. It has been further pleaded that the petitioner is not entitled to relief under Article 226 of the Constitution of India because he has not availed the remedy of revision in terms of Section 21 (b). The deponent has further averred that interest @ 12% has already been paid to the petitioner and he is not entitled to any other relief because, while allowing F.A.No.57 of 1999, the State Commission did not direct payment of interest.

Shri V. Srinivas, learned counsel for the petitioner fairly admitted that challenge to order dated 20-3-2003 is delayed by 3 years and 10 months, but argued that relief should not be denied to his client only on that ground because, as per the agreement entered with the bank, he and other depositors are legally entitled to interest @ 15.84%. Learned counsel further argued that failure of the Commission to ordain the payment of interest is vitiated by an error of law apparent on the face of the record and, therefore, the impugned order should be quashed and a direction be issued to the bank to pay compound interest @ 15.84%.

Shri Deepak Bhattacharjee argued that the petitioner should be non-suited because he has challenged the order of the State Commission after more than 3 years and 10 months. He further

argued that the writ petition should be dismissed because the petitioner has given up challenge to orders dated 25-5-2005 and 11-10-2006 passed by the District Forum and the Commission whereby the petitioner's claim for award of interest @ 15.84% was negated.

We have considered the respective submissions. In our opinion, the writ petition is liable to be dismissed not only on the ground of laches, but also on the premise that the petitioner has given up his challenge to orders dated 25-5-2005 and 11-10-2006 passed by the District Forum and the State Commission respectively.

Undisputedly, the writ petition has been filed after 3 years and more than 10 months of the decision of F.A.No.57 of 1999 vide which the State Commission directed the respondents to pay the differential amount to the petitioner and seven others. The petitioner could have challenged that order by filing revision under Section 21 (b) of the Act before the National Commission. The limitation for filing revision is 30 days. However, the fact of the matter is that the petitioner did not avail the statutory remedy and filed this petition after 3 years and 10 months without any explanation for this long time gap. Therefore, it must be held that the writ petition suffers from laches.

Article 226 does not, in terms, prescribe any limitation for filing writ petitions for issue of directions, orders or writs including mandamus, habeas corpus, certiorari, quo warranto and prohibition, but during last 57 years, the superior Courts have consistently held that belated claims should not be entertained under that Article. In

State of Madhya Pradesh v. Bhailal Bhai^[1], the Constitution Bench of the Supreme Court considered the question whether a petition filed under Article 226 of the Constitution of India for issue of a direction to the respondents to refund illegally collected tax can be dismissed only on the ground of delay. The Supreme Court answered the

question in affirmative and laid down the following propositions:

“1) If there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the Court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Art. 226 of the Constitution.

2) The provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.”

The same view was reiterated by another Constitution Bench in

Tilokchand v. H.B. Munshi^[2]. Speaking for the majority of the Court, Hidayathullah, CJ, observed:

“If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the sine qua non for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily,

but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.

There is no lower limit and there is no upper limit. A case may be brought within Limitation Act by reason of some Article but this Court need not necessarily give the total time to the litigant to move this Court under Art. 32. Similarly in a suitable case this Court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose.”

The proposition laid down in the second judgment was approved by the majority of nine-judge Bench in **Mafatlal Industries Ltd. v. Union of India**^[3].

By applying the ratio of the above noted decisions to the facts of this case, we hold that the writ petition is highly belated and is liable to be dismissed on that ground. We may add that in matters involving challenge to the judicial and quasi-judicial orders passed by the Courts subordinate to the High Court and Tribunals/quasi-judicial authorities, the delay of even few months can be treated fatal to the cause of the petitioner more so when the litigant seeks intervention of the High Court without availing the remedy available under the statute. If the legislature prescribes the period of limitation for availing statutory remedies of appeal and revision against the orders passed by the Courts and Tribunal, then while considering the issue of delay and laches in filing writ petition against an order, which could be made subject matter of challenge in appeal or revision, the High Court can legitimately take into consideration such period and

non-suit the petitioner if no tangible or substantial explanation is given for the delay.

We also find substance in the argument of Shri Bhattacharjee that after having withdrawn Writ Petition No.24756 of 2006 filed by him for quashing orders dated 25-5-2005 and 11-10-2006, the petitioner cannot indirectly resurrect his claim for award of interest @ 15.84%. In our opinion, after having given up the challenge to those orders, the petitioner cannot, in the garb of seeking relief against order dated 20-3-2003 passed by the State Commission, claim interest at a rate higher than the one specified in the order of the District Forum.

Before concluding, we may mention that if the respondents had questioned the legality of orders dated 25-5-2005 and 11-10-2006 by filing writ petition under Article 226 of the Constitution of India, there was a distinct possibility of the same being nullified because it is extremely doubtful whether, in exercise of the power under Section 27 of the Act, the District Forum could, without there being any direction by the State Commission, award interest to the petitioner @ 12%.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

March 29, 2007

C.V. NAGARJUNA REDDY, J

svs

[\[1\]](#) AIR 1964 SC 1006

[\[2\]](#) AIR 1970 SC 898

[\[3\]](#) JT 1996 (11) SC 283